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Michael J. Shebek

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EXAMINER

FETSUGA, ROBERT M

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* MICHAEL J. SHEBEK

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Appeal 2007-4205  
Application 10/735,144  
Technology Center 3700

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Decided: January 31, 2007

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Before WILLIAM F. PATE, III, HUBERT C. LORIN, and  
JENNIFER D. BAHR, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Michael J. Shebek (Appellant) appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1-17. Claims 18-19 have been withdrawn. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

## THE INVENTION

Appellant's invention is directed toward a universal track and coping assembly for use with a swimming pool cover. The coping 40 has a slot 42 for receiving the reversible track 60 (Spec. 9, ¶ 36 and figs. 2-3). The coping slot 42 includes an inner wall 43, an opposite inner wall 44, and a coping tab 48 projecting from the inner wall 43 (Spec. 10, ¶ 37 and fig. 4). The reversible track 60 includes a first channel 64, having a first opening 65, and a second channel 70 with a second opening 71 and a rope passage 74, wherein the first and the second openings face opposite directions (Spec. 10, ¶ 39 and fig. 5). The first channel 64 and the rope passage 74 are configured to receive the rope attached to the pool cover (first rope arrangement), whereas the second channel 70 is configured to receive a portion of a slider attached to the pool cover (second rope arrangement) (Spec. 5, ¶ 14 and figs. 7-8). The universal track and coping assembly of Appellant's invention also includes at least one insert plate 90, which is inserted between the reversible track 60 and the coping 40 to mechanically interlock the reversible track within the coping (Spec. 11, ¶ 42 and figs. 6-8).

Claim 1 is illustrative of the claimed invention and reads as follows:

1. A universal track and coping assembly for use with swimming pool covers comprising:

a coping defining a slot having a slot opening for receiving a track, an inner wall and an opposite inner wall, either one of said inner wall and said opposite inner wall defining a coping tab projecting therefrom; and

a reversible track defining a first channel having a first opening and a second channel having a second opening, said first opening defining a first configuration adapted to receive a first rope arrangement, said second opening defining a second configuration adapted to receive a second rope arrangement, said second rope arrangement being different from the first rope arrangement, said reversible track insertable into said slot,

whereby either one of said first opening and said second opening faces in the same direction as said slot opening, and whereby said coping tab keeps said reversible track from sliding out of said slot opening.

#### THE REJECTIONS

The Examiner relies upon the following references as evidence of unpatentability:

Last	US 6,496,990 B2	Dec. 24, 2002
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Appellant seeks review of the Examiner's rejections of claims 1-17 under 35 U.S.C. §102(a)/(e) as anticipated by Last.<sup>1</sup>

The Examiner provides reasoning in support of the rejections in the Answer (mailed February 20, 2007). Appellant presents opposing arguments in the Appeal Brief (filed December 20, 2006) and Reply Brief (filed April 18, 2007).

#### OPINION

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<sup>1</sup> The rejection of claims 1 and 6-11 under 35 U.S.C. §112, 1<sup>st</sup> paragraph has been withdrawn by the Examiner (Ans. 2-3).

Appellant argues all the claims rejected under 35 U.S.C. §102(a)/(e) together as a group. Therefore, in accordance with 37 C.F.R. § 41.37(c)(1) (vii), we have selected claim 1 as the representative claim to decide the appeal of the anticipation rejection, with claims 2 through 17 standing or falling with claim 1.

The Examiner explains where the elements of claim 1 are disclosed in Last. The Examiner found that Last discloses a track and coping assembly for use with swimming pool covers including a coping (extruded wall channel 26) having a slot opening 42 for receiving a reversible track 11, and an insert wedge (spacer plate 34) (Ans. 3). Further, the Examiner found that the coping includes an inner wall (top channel side wall 31), an opposite inner wall (bottom channel side wall 33), and a tab (longitudinal land 32) projecting from the inner wall (Ans. 3). The Examiner also found that the track 11 includes two locking ledges 13, a first channel (longitudinal C-channel 16) having a first opening (slot opening 17), a second channel (longitudinal return cable channel 19) having a second opening (longitudinal opening 21), a pulley 23, and a pulley housing 36 (Ans. 3). Pointing to col. 5, ll. 33-42 of Last, the Examiner concludes that the openings 17 and 21 are “‘adapted to receive’ different rope/slider arrangements” (Ans. 3).

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). The issue presented in this appeal is whether the Appellant has demonstrated that the Examiner erred in determining that the

subject matter of claims 1-17 is anticipated by Last. This issue turns on whether Last satisfies the limitation in independent claim 1 that the first and second channels are adapted to receive first and second rope arrangements, respectively, “said second rope arrangement being different from the first rope arrangement.” The crux of Appellant's argument is that the channels 16 and 19 of Last have the same configuration, whereas the claimed invention requires the first and second channels to have different configurations (App. Br. 10). Appellant’s argument, as we understand it, is that because the first and second rope arrangements are different, the channels that are “adapted to receive” the first and second rope arrangement must also be different (App. Br. 10-11). Hence, Appellant argues that Last does not teach “two channels wherein each channel has a different configuration for different rope arrangements” (App. Br. 12).

In support of the position that claim 1 requires the first and second channels to have different configurations, Appellant argues that the claims should be “construed commensurate with the scope of the disclosure in the specification.” (App. Br. 11). This is not an accurate statement of the law. We determine the scope of the claims in patent applications “not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction ‘in light of the specification as it would be interpreted by one of ordinary skill in the art.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005) (en banc) (quoting *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364, 70 USPQ2d 1827, 1830 (Fed. Cir. 2004)). We must be careful not to read a

particular embodiment appearing in the written description into the claim if the claim language is broader than the embodiment. *See Superguide Corp. v. DirecTV Enterprises, Inc.*, 358 F.3d 870, 875, 69 USPQ2d 1865, 1868-69 (Fed. Cir. 2004) ("Though understanding the claim language may be aided by the explanations contained in the written description, it is important not to import into a claim limitations that are not a part of the claim. For example, a particular embodiment appearing in the written description may not be read into a claim when the claim language is broader than the embodiment.") The challenge is to interpret claims in view of the specification without unnecessarily importing limitations from the specification into the claims. *See E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003).

We agree with the Examiner that the claim language at issue is broad enough "to literally encompass a reversible track having identical channel opening structures" (Ans. 5). The dictionary defines "adapt" as "to make fit" or "to make suitable" (*Merriam Webster's Collegiate Dictionary* 13 (Tenth Ed. 1997)). Thus, a "configuration adapted to receive a first [or second] rope arrangement" is a configuration that is "suitable" or is "fitted" to receive the "first [or second] rope arrangement." While Appellant's application discloses a track 60 having first and second channels having different configurations (figs. 2, 3, and 5), claim 1 is not so limited. The further limitation in claim 1 that the second rope arrangement is different from the first rope arrangement does not require, as Appellant argues, that the channels themselves have differing configurations. As long as the

channels of Last can receive different rope arrangements the limitation has been met. In this regard, we note that Last specifically teaches that the first channel (longitudinal C-channel 16) captures and holds a side edge of the pool cover (first rope arrangement), whereas the second channel (longitudinal return cable channel 19) receives the cable connecting the reel and the pool cover corners (second rope arrangement) (col. 2, l. 66 through col. 3, l. 7 and col. 5, ll. 35-43). Therefore, because the side edge of the pool cover is different than the cable connecting the reel and the pool cover corners, we find that Last's first and second channels are adapted to receive different rope arrangements. Furthermore, although Last teaches that the channels have the same configuration because they are "mirror reflections of each other" (col. 6, ll. 61-67), we note that Last also teaches that when accommodating sliders or debris gutters the symmetrical configuration of the track is "outweighed by mechanical factors" (col. 7, ll. 1-4). Hence, we find that a person of ordinary skill in the art would reasonably infer that Last teaches asymmetrical (differing) channel configurations when accommodating sliders or debris gutters.

Appellant further argues that the Examiner has not provided any evidence to rebut paragraph 5 of the Declaration of Bruce Holmes, filed December 9, 2005 ("Holmes Declaration") (Reply Br. 2-3). However, we note that the Examiner specifically referred to paragraph 5 of the Holmes Declaration on page 4 of the Office Action mailed February 14, 2006 (hereinafter "Office Action"), pointing out that the declaration is not commensurate with the scope of the claims because "the claims at bar do not



recite C channels having different configurations” (Office Action 5). The Examiner’s position is well taken, for the reasons discussed above.

For the foregoing reasons, Appellant’s arguments do not persuade us the Examiner erred in rejecting claims 1 through 17 as anticipated by the teachings of Last. Therefore, the rejection of claims 1 through 17 is sustained.

SUMMARY

The decision of the Examiner to reject claims 1-17 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2006).

AFFIRMED

vsh

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